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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

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Held at the Palais des Nations, Geneva,
on Monday, 15 May 1995, at 3.00 p.m.

Chairperson: Mr. ALSTON

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The meeting was called to order at 3.15 p.m.

GENERAL DISCUSSION: "THE INTERPRETATION AND PRACTICAL APPLICATION OF THE OBLIGATIONS INCUMBENT UPON STATES PARTIES TO THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS" (agenda item 7) (continued) (E/C.12/1995/WP.2 and 3)

1. Mr. TEITELBAUM (American Association of Jurists) drew the Committee's attention to document E/C.12/1995/WP.2 submitted by his organization on article 1 of the draft optional protocol, and more particularly to the second comment in the document. He noted that "globalization" embraced three aspects: international trade, transnationalized industry and international financial capital.

2. The conditions of international trade were far from ideal due, on one hand, to trade imbalances and, on the other hand, to protectionism. The adjustment policies of the International Monetary Fund (IMF) and the agreements of the World Trade Organization were instruments which obliged developing countries, to their detriment, to open up to international trade.

3. According to a 1994 United Nations Conference on Trade and Development (UNCTAD) report, transnational corporations controlled one third of world industrial production, amounting to $4.8 trillion, a figure larger than that for total international trade. Transnational industries moved rapidly from country to country in search of the lowest salary levels. They created jobs in developing countries, but were also responsible for the disappearance of local industries and trades which were unable to compete with them. The relocation of industries also had negative effects on the level of employment in the developed countries.

4. With reference to the internationalization of financial capital, in 1990, European and United States traders controlled $8 billion in capital which was used mainly for financial speculation. Such a concentration of capital, put to unproductive use, had had a profound effect on the world economy. The fluctuation in the value of the dollar also reflected private interests of the United States, that sought to improve its trade balance at the expense of the rest of the world.

5. The case of Mexico revealed the vulnerability of national economies and finances to international financial capital movements. One large withdrawal of capital had created an enormous financial crisis and in order to mitigate the effects on its economy, the country had had to adopt measures which had serious repercussions on the standard of living of the Mexican people. Other countries in the "emerging markets" category might also suffer the same fate. Globalization was not "global", as the term would have one believe; rather, it was pyramidal or triangular. Even the most trivial decisions taken in the rich countries could have devastating consequences on poor countries.

6. Such a schematic view of globalization would not be complete without reference to those marginalized by globalization, namely, the countries which, over the previous decade, had been practically ignored by the developed countries in terms of investment, assistance and commercial trade. Such a

disregard was a flagrant violation of the obligations of cooperation and international solidarity enshrined in the various international instruments.

7. The adjustment policies imposed by the IMF and the sectoral and structural adjustment loans of the World Bank had had negative economic and social effects on large numbers of people particularly in the most vulnerable strata of society. The financial institutions had always promised that such effects would be temporary until the re-establishment of the economy for the benefit of the entire society. However, the socio-economic gap between countries and within countries had continued to widen even in the most developed countries. The Republic of Korea and the "Asian tigers" were offered as positive examples of the neo-liberal policy advocated by the international financial bodies. Those countries, however, had done precisely the opposite of what the IMF had recommended.

8. He did not seek to use that view of globalization, in support of the theory of the exclusive responsibility of transnational capital and the international financial bodies for the situation of economic, social and cultural rights in each country. It should be clear that the main responsibility lay with each Government and included the responsibility for policies that had weakened their economies, rendering them completely vulnerable to the devastating effects of transnational movements of capital. In fact, as already noted, the countries that did not opt in favour of such policies could show a relatively acceptable socio-economic balance.

9. In examining the application of the Covenant in a country, it was necessary to take into consideration not only the Government's policies and attendant responsibilities, but also the effects on that country in the international context. It should also take into account the responsibilities of third countries, enterprises, banks and transnational financial groups, and the international financial bodies.

10. The Committee should introduce the concept of the joint responsibility of Governments and the various international entities into its work programme. That idea was based on economic globalization and on the Charter of the United Nations, the Universal Declaration of Human Rights, the Covenant and on other international instruments, as had been stated in document E/C.12/1995/WP.2. In particular, with regard to adjustment policies, he wished to indicate his organization's reservations on paragraph 12 of the Committee's General Comment No. 3 (E/C.12/1990/8) and the recommendations at the Committee formulated in respect of States undergoing a process of adjustment, that the most vulnerable members of society needed to be protected. Its reservations were based on the fact that adjustment policies could not be considered a natural phenomenon in the same way as a natural disaster. Adjustment policies were political options that favoured certain sectors within society, to the detriment of others, and accorded priority to dividends over general welfare.

11. If the Committee wished to study the application of the Covenant objectively, it should consider adjustment policies as a political decision and not as an inevitable occurrence. Furthermore, if adjustment policies jeopardized the application of the Covenant, the Committee should confine itself to taking note of the violations and recommending that they cease,

rather than suggesting specific "low-cost" programmes, as it did in paragraph 12 of the General Comment No. 3. It was not the Committee's task to propose alternative policies. It should objectively examine the implementation of the Covenant. In doing so, a distinction had to be made between the rights to be applied immediately and those to be applied gradually. There was also a need to distinguish between objective situations and political decisions.

12. There were differences between States and no one could claim that the fulfilment of economic, social and cultural rights in a poor country could be achieved to the same degree as in a country with adequate resources. he shared the view that regressive measures, which were based on political decisions, represented violations, regardless of the level of resources of the State concerned.

13. Turning to an earlier discussion on the differences and similarities between the two Covenants, he referred in particular to article 2, paragraph 3, of the International Covenant on Civil and Political Rights concerning an effective remedy for persons whose rights had been violated by officials. It was most regrettable that the International Covenant on Economic, Social and Cultural Rights did not contain such a clause. He also referred to article 1 of the draft optional protocol and said that the article was at fault for introducing a condition, namely, that individuals or groups should be subject to the jurisdiction of the State party, since that condition had not been included in the Covenant. His organization therefore urged the Committee to amend the article.

14. Mrs. ASHRAF (United Nations Educational, Scientific and Cultural Organization (UNESCO)) welcomed the Committee's interest in improving its coordination with the United Nations specialized agencies. She said UNESCO looked to the Committee and others of its kind to play a catalytic role in speeding up the implementation of programmes. She referred to the Committee's earlier mention of the need for constructive dialogue.

15. UNESCO's ad hoc forum of reflection held regular meetings to discuss the quality of education and international educational needs. New models were needed to apprehend reality and to move forward. The role of international government organizations and their relationship with people, the interdependence of economics, educational, social and cultural issues needed to be rethought. Following the World Summit for Social Development, UNESCO had explored innovative and creative approaches to meet Summit goals.

16. As far as education and the family were concerned, it was important to highlight, more than ever, UNESCO's role in taking the home environment into consideration for the development of family education programming, the teaching skills for human rights groups and working with families and children. The UNESCO volunteer scheme based on "Each One Teaches Ten" was based not on literacy goals but rather on the importance of the quality of life. The scheme focused on self-reliance and creativity to keep young persons occupied in a productive manner, away from fear, hatred and violence. In addition, UNESCO was involved in several other educational, environmental, health and cultural projects. Programmes could be effective if experiences

were shared and UNESCO was committed to sharing experiences and learning from them. In conclusion, UNESCO fully supported the Committee's objective of interacting with other United Nations agencies.

17. Mr. ADEKUOYE said that when he first examined the Covenant, he asked himself why States at certain levels of social and economic development should accede to the Covenant. In the application of the Covenant, it had been said that to be able to implement many of the rights protected by the Covenant, States must have access to generous resources. But many States did not even approach a minimum level of access to resources. He referred to article 2 of the Covenant which established an undefined time-frame in which States at various levels of development could achieve the goals of the Covenant. Article 2 also introduced the highly relevant element of non-discrimination. He concluded, therefore, that the Covenant was relevant to any State, at any level of development.

18. Turning to the issue of rights, he said article 11 of the Covenant had far-reaching legal, economic and political implications. He gave an example illustrating how the concept of individual rights differed between persons living in an agricultural society from that of persons living in a cosmopolitan environment. He said the Committee often looked at the issue of rights in absolute terms without regard to differences in political and social orientation. He hoped that the Committee would consider the application of rights taking such differences into account. He also thought the Committee should publicize its work because there were many people in the world who were unaware of the topics addressed by the Covenant. There were perhaps many persons, non-governmental organizations (NGOs) and countries that were conversant with the concept of civil and political rights, but unfamiliar with that of economic, social and cultural rights. If the Committee were to publicize its work to sensitize the populations of many countries, it would have to consider how it would reconcile the differing views, within a given country, on the rights to which people were entitled.

19. Even countries with high levels of economic development had been obliged to undertake certain adjustments. If benefits to the disadvantaged groups had to be cut, in what proportions should those cuts be made? What effect would such cuts have on the incentive to work? Who should bear the brunt of those cuts? If institutions such as the IMF demanded cuts in expenditures, countries at all levels of development had to consider how those cuts should be made to meet the demands of the IMF and, at the same time, to provide incentives to the people who worked, invested and contributed to the recovery of the economy.

20. Mr. KOTHARI (Habitat International Coalition) said that his organization was concerned about the effectiveness of the Covenant, particularly with regard to its domestic applicability. Habitat appreciated the Committee's conceptual work and the conclusions it reached, but amidst the developing legal arguments there remained obstacles to the Covenant becoming reality.

21. First, there was the interpretation put on the term "binding". States parties were very selective about what international agreements they took seriously. The obligations and conditionalities of structural adjustment programmes, debt policies or trade agreement were taken as binding, while the

Covenant and other human rights treaties were not implemented. Indeed, such obligations often led to the dismantling of the very social legislation necessary to ensure the domestic applicability of the Covenant. The Committee should therefore reflect on what enforcement and monitoring mechanisms were needed to ensure that the Covenant was truly binding, and what national and international conditions would be required.

22. Second, the very legal basis of the Covenant and the rights it contained were being forcefully questioned. At a recent meeting of the second Preparatory Committee for the United Nations Conference on Human Settlements (Habitat-II), to be held in June 1996, the delegation of the United States of America had succeeded in removing all mention of the right to adequate housing from the preparatory documents of the Conference, on the grounds that legal arguments and discussions on economic, social and cultural rights were mere words: a person feeding a hungry child, for example, needed to be shown the way to provide food, not instructed about the child's right to food. The upshot was that a United Nations Conference on Human Settlements would take place without the agenda mentioning the right to housing. The Committee might want to discuss the implications of that decision.

23. Third, there was the question of how far the Covenant was applicable domestically. In a recent case in Bombay concerned with the forced eviction of slum dwellers, counsel for the slum dwellers had cited article 11, paragraph 1, of the Covenant to support their housing rights. Counsel for the Government had convinced the judge that the Covenant was not relevant or self-executing. The Committee might therefore wish to consider how it could be ensured that domestic legislation followed the spirit and the letter of the Covenant.

24. Fourth, as Mr. Adekuoye had said, there was a lack of knowledge not only of the Covenant but of the United Nations human rights programme itself. The Committee should give some thought as to how to redress that situation.

25. Lastly, it was a misconception that the rights contained in the Covenant were dependent on a country having resources and funds. He queried whether it was adequate for a State party to plead poverty, as the Philippines had recently done. The issue was rather one of redistributive justice, of growing income disparity and the growth of inequality. The burden of proof rested with Governments to prove that the resources needed to arrest the growth of poverty were not available or that other measures could not be taken to ensure the enjoyment of rights contained in the Covenant. The Committee should therefore discuss how much could be done by States parties without resources, in relation to each of the rights contained in the Covenant. Overall, it should periodically take a sober look at the reality of the world social situation and act accordingly.

26. The CHAIRPERSON wished to record his strong appreciation of the contribution made by Habitat International Coalition, which had given the Committee a great deal of the support any committee needed. With regard to the removal of the reference to the right to adequate housing from the agenda of the United Nations Conference on Human Settlements (Habitat-II),

he suggested that the Committee should adopt and send the Preparatory Committee a statement emphasizing the importance that the Committee attached to that right.

27. Ms. TAYA said that, in so far as it was mentioned in the Covenant, international cooperation aimed at the fulfilment of economic, social and cultural rights, especially for the poorest people in developing countries. In fact, however, there had been little improvement in the situation of poor people; instead, the most privileged groups in developing countries had profited at the expense of the poor. Structural adjustment programmes had the benefit of encouraging poor countries to pay their debts as quickly as possible, but they hampered the promotion of the economic, social and cultural rights of vulnerable people. She therefore urged that the conditionality of foreign aid should be reconsidered, so that international cooperation could achieve its original intention. For example, the Philippines could be encouraged to implement the Comprehensive Agrarian Reform Programme progressively, making one year's foreign aid conditional on the proper use of the previous year's. Such action to bring about the implementation of social adjustment programmes did not constitute interference in internal affairs, since their objective was also the objective of international cooperation and was moreover very efficient. The Committee should recommend to both recipient and donor countries, as well as United Nations organs, that they should adopt social adjustment programmes in negotiating foreign aid.

28. Mr. CRAVEN (University of Leicester) wished to explain, in response to Mr. Simma's request, his views on the development of the Committee's quasi-judicial role. It was clear from Part IV of the Covenant that originally States parties' reports were to be considered by the Economic and Social Council, not by a committee of experts passing on requests for technical or financial assistance to intergovernmental organizations. The creation of the Committee had constituted a significant departure: it had suggested that the supervisory body should assess reports. That role had been developed further: the Committee was competent to receive "complaints" from non-governmental organizations in the guise of supplementary information, it could request ad hoc reports from States, whether or not they were due to report, and it could conclude that States had violated their obligations under the Covenant. It was not that the Committee had transformed itself into a court, but it had taken on the forms of a judicial procedure; hence his reference to a quasi-judicial role.

29. With regard to how far that approach was appropriate, he pointed out two benefits. First, the Committee was beginning to get to grips with some aspects of its brief, notably housing, and was therefore confident in its own judgements. Secondly, the Committee was growing more similar to other United Nations bodies, since it was clear that economic, social and cultural rights were not as different from civil and political rights as might be imagined.

30. Turning to the question of whether the Committee could develop its role beyond the narrowly quasi-judicial, he hoped that the Committee would take in good part any criticisms he might make. It was clearly not able to solve the broad issues of poverty or deprivation; it could not prevent outbreaks of violence or the accession of dictatorial regimes; it would not save the world.

Nor had it been able to assist States in developing social programmes or restructuring their economic relations; it lacked the technical, administrative or financial means to do so. States did not generally expect assistance, but scrutiny by some sort of judicial body. He did not think, either, that the Committee would significantly alter the way in which aid was given by the international financial community. The Committee was, therefore, left with an essentially marginal role, dealing with States that had overstepped the mark in some way through arbitrary or indiscriminate action. A possible approach, as the Committee had outlined in its first general comment, was to ensure that there were appropriate decision-making policies at national level; such an aim could continue to be achieved through the reporting procedure. That did not exclude the possibility of the Committee's undertaking a more expansive role, but it would need more expert knowledge, either developed within itself or brought in from outside. So far it had been incapable of either, particularly in relation to such technical issues as International Labour Organization standards, which figured in articles 6-9. Individual members might have some knowledge, but the general level of expertise was low. He understood the constraints within which the Committee worked, but more expert knowledge would need to be imported if the Committee was to expand its work.

31. The CHAIRPERSON said that the Committee gave out much criticism and was glad to accept constructive criticism itself; it needed outside pressure to continue to do its work effectively. He was, however, more optimistic than Mr. Cravan about the Committee's development.

32. Mr. TEXIER, returning to the points raised by the representative of Habitat International Coalition, said that the example that had been given of the case in Bombay pointed to the serious problem regarding States' interpretation of the Covenant. At the morning session he had stressed that if States ratified the Covenant they had an obligation to introduce legislation to implement its provisions; the Committee should stand firmly behind that principle. Yet the inherent difficulties involved could be illustrated by the case of his own country. France had not ratified the Covenant until 1981; but even once it had done so a law specifically enunciating the right to adequate housing was passed only in 1990. That right had not been contained in any previous law nor in any of the successive French Constitutions. The need for adequate housing existed, moreover: there were homeless people, there were squatters, particularly in buildings belonging to major companies, and the housing stock was still some 300,000 units short. The recently emerging political will to bring about an improvement, however, was due not to the ratification, nor to the passage of the legislation, but to the fact that various non-governmental organizations and individuals, notably the social activist Abbé Pierre, had waged a campaign on the issue. They had pointed out how intolerable it was that a rich country should have so many homeless people; society had been galvanized and so at long last the matter had become a political issue. Noting, in passing, that the recently elected President of the Republic had long been Mayor of Paris and therefore held some responsibility for the incidence of homelessness, he said that the public had come to recognize that adequate housing was a right, even if it was in conflict with other rights.

33. It was clear that the Committee should indeed require States to fulfil their obligations to adopt legislation and to implement the Covenant, but it should also pay due attention to the views of society. The Committee itself needed to be more broadly informed. It had made some headway on the right to adequate housing, but not so much on other issues; the Covenant contained many other rights which the Committee had not had the external support to cover adequately. The Committee had never considered the situation of individual companies without looking for guidance to counter-reports by non-governmental organizations. There was less support from those concerned with specific issues, however, or, with few exceptions, from trade unions, particularly with reference to articles 6-9. He believed that the Committee's greatest success was in being a catalyst: its consideration of country reports led to national debate, press reports and a raised awareness all round. The Committee could not solve problems, but it could throw light on them; and occasionally it could smooth the way to providing international cooperation, as in Panama - the exception that proved the rule - which had specifically requested support in implementing the Covenant.

34. Mr. WIMER ZAMBRANO said that the Committee had made some progress, but on a practical level many problems remained. He was not keen to adopt the draft optional protocol, because a lot of work still needed to be done on the nature of States parties' commitment to the Covenant. It was a most varied document with varied rights which could not be considered en bloc. It was essential that the various rights should be evaluated and classified, with distinctions made between those that came within the competence of the courts, those which could be implemented immediately and those that could be implemented only progressively or between the different kinds of violations, whether deliberate or merely resulting from action taken to comply with the Covenant. Another type of classification would be to categorize States according to their interests and resources. Above all, the Committee itself should have a clearer idea of what was required of States, otherwise it would not perform its function properly. The Committee should devote more time to gathering materials towards such a classification. In that way it would be able to measure States' responsibility for violation - or the degree of that responsibility - and aim the appropriate comments at a given State. It would thus be possible to make a distinction between two typical forms of violation in Latin America with regard to cultural rights. Where teaching was not provided in the indigenous language, a State could plead lack of resources, even though a violation of cultural rights was involved. Where trials, however, were not held in the indigenous language there was a clear personal violation of an individual's cultural rights if that person did not understand the language of the court. It was therefore incumbent on the Committee to be tough on some violations and lenient with others; but such a discriminating attitude could be developed only if rights were classified and categorized, taking into account all the views expressed.

35. Mrs. JIMENEZ BUTRAGUEÑO said that international cooperation was often brought about because non-governmental organizations insisted on action. In other cases such organizations were against international action because it was undertaken in the wrong way or the benefits were inappropriately distributed. Beneficiary countries should therefore be asked how they wished to use aid that was given; donor countries might thereby be encouraged to contribute more. She noted that the Committee had had few contributions from

non-governmental organizations in developed countries: only one from Spain, for example. The Committee should state that it encouraged the participation of non-governmental organizations from such countries. When the cuts in the social budget of Sweden had been under discussion, for instance, there had been no indication of whether the non-governmental organizations of that country had any objections. States, too, should encourage such participation.

36. Mr. GRISSA said that State legislation on the right to housing would mean, from the people's point of view, the right to be offered housing by the State. That was a situation which was patently untenable from a Government's point of view, particularly in developing countries, such as Algeria, whose population increased by some two and a half per cent per annum. It was therefore both inappropriate and undeniable for the Committee to encourage States to legislate on areas in which they would be powerless to act. The Committee's condemnation of a country for failing to legislate would be far less damaging to the country than the enactment of certain legislation.

37. The same was true in the developing countries with regard to other rights, for example, the right to health: in countries like Zaire, which had only one doctor per 50,000 people in many regions, and neither hospitals nor drugs, the right to health was meaningless.

38. The CHAIRPERSON said that rights began as aspirational endeavours: rights such as the freedom of the press, the right to vote and the equality of women, which had once been condemned as ridiculous were, if not already fully realized, on the way to realization.

39. Countries which had acceded to the Covenants had freely accepted the ensuing legal obligations, including the right to housing. The developing countries had also been greater proponents of economic rights than they had of civil and political rights. The right to housing was not a matter of a Government providing housing but rather an obligation on the Government to create conditions, policies and programmes conducive to the realization of the right to housing. Such policies required little in the way of government expenditure, but they frequently required the cessation of the protection of the upper and middle classes.

40. In that respect, in a country such as Zaire, the right to housing was not irrelevant but was possibly dangerous for its Government which, so far, had only looked after itself. What was involved, therefore, was fundamental human dignity whose definition included not only the right to vote and to free speech but also to subsist in tolerable conditions. Such a situation could not be created overnight and resources were not available in abundance for its achievement. However, many Governments would undoubtedly achieve far more if they took those values seriously, hence the relevance of insisting on the importance of the right to adequate housing.

41. Mr. AHMED said that while developing countries had flocked to accede to the Covenant in order to join the caravan of progress and to be regarded as modern and civilized countries, most of them failed to comply with the requirements of the Covenant by a large margin. The Committee had a

valuable role, therefore, as a pressure group, in urging those countries to make greater progress and, in so doing, more closely observe the rights devolving from the Covenant.

42. The views of Mr. Adekuoye and Mr. Grissa, both of whom came from developing countries, were nevertheless valid. Developing countries deserved special treatment when they appeared before the Committee. Many of those countries, like his own, had experienced the imposition of structural adjustment arrangements by the IMF and Would Bank, including the abolition of government subsidies on staple foods, putting an end to the appointment of university graduates to government posts, and liquidating the public sector. In his own country, Egypt, the lives of millions of poor people depended on the staple foods subsidized by the Government; the Government's five million employees would join the other millions of unemployed, while a similar fate awaited those employed in the public sector because the private sector was not strong enough to take them on. Fortunately for all its citizens, the Egyptian Government, having witnessed the results of devaluation in Mexico, had resisted the demands of the IMF and World Bank to devalue thereby, for the time being at least, fending off the inevitable sharp increase in the price of all its inputs.

43. In the third world in general, where 90 per cent of the population lived in rural areas, people had never expected or received any form of social security, or subsidies to build houses. In other words, to them, the requirements of the Covenant were meaningless. Even so, immediately after independence, people had opted for socialist policies and a command economy. Today, the situation was changing and the whole world appeared to be clamouring for a free economy, liberalization and laissez-faire, leaving entire populations in a transitional period in which they benefited from neither type of economy. Their Governments were caught between the international community, represented by the World Bank and the IMF pressing for courses of action which they had never attempted, and the people who were clamouring for results.

44. When faced with reports by third world Governments, therefore, the Committee, should bear in mind the conditions prevailing in those countries, treat them with a special kind of understanding and take their difficulties into account. The Committee should also bear in mind that what it demanded in terms of social welfare programmes was actively discouraged by the World Bank and the IMF.

45. Third world Governments were all too aware of their predicament and that of their people and deserved the Committee's sympathy and encouragement rather than its criticism. It would be more appropriate for the Committee to ask them for progress reports than reports indicating the extent to which they had failed to fulfil the requirements of the Covenant; they should be invited to show comparative results to enable their progress to be measured. By displaying a willingness to help, the Committee would be more likely to ensure their goodwill, their commitment to progress and to addressing the many difficulties that they faced.

46. The CHAIRPERSON observed that the countries whose reports had best been received by the Committee were those which adopted that approach, by acknowledging their problems and reporting on the ways in which they were struggling to tackle them.

47. Mr. TEXIER expressed surprise that the Committee had never questioned the fact that the Covenant obliged States to enact legislation and that no State had ever reacted against that obligation, affirming instead the various rights which the Covenant promoted. It was therefore to be hoped that States would use the Covenant to defend those rights vis-à-vis the policies of the IMF and World Bank.

48. Furthermore, while subscribing to the view that the Committee should accord different treatment to States parties, depending on their level of development, he felt strongly that questions concerning rights should be put in the same way irrespective of the country. Failure to do that would imply that poorer people had fewer rights than the rich.

49. Lastly, the Committee needed to bear in mind that its role, like that of the other treaty bodies, was to try to ensure the attainment of the many rights promoted by the Covenant. In so doing, it should remember that those rights had become a reality for Nelson Mandela and other freedom fighters around the world, and that the right to housing was no more exotic than any other right.

50. Mr. ADEKUOYE fully endorsed the Chairperson's view that Governments should be encouraged to pursue whatever policies were necessary or conducive to the realization of rights. However, Governments needed to set priorities in their pursuit of such policies, which meant political choices. Those choices might not be consistent with the demands of the people, and that was where the problems often lay. If States parties appearing before the Committee were to be asked what their priorities were, the Committee should ask itself whether it had the expertise to judge those priorities and whether or not it was qualified to judge a Government's political choices. In a fully democratic society, which the Covenant was supposed to guarantee, how could the Committee challenge what the people demanded?

51. Mr. GRISSA observed that it was not that some Governments were more benevolent and solicitous of their poor than others. It was rather a question of means in relation to ends. Similarly, civil and political rights - which had a long tradition and did not require any investment - could not be compared to economic, social and cultural rights, which had only recently come to be recognized even in the West, and cost money. Resources conditioned rights.

52. In reality, it was not the spirit of the law that was important but how it was implemented and understood. Countries that were not at the same level of development did not understand rights in the same way as did the West. His own country, for instance, was unable to declare a universal right to education because it simply did not have the capacity to build enough schools, even when it devoted 30 per cent of its budget to education or when it made a concerted effort to lower the birth rate. For Tunisia, the right to education was therefore a conditioned right.

53. The developing countries, which had been financing their expenditure by debt, could no longer continue to do so, and needed quite rightly to make adjustments to start living within their own means. Even the IMF and the World Bank were reaching saturation of their capacity to support financing by borrowing, as did all financial institutions. The members of the Committee, sitting in their comfortable environment, should understand the real world. Those who wrote the Covenant, on the other hand, had understood it very clearly: article 2 expected each State party to take steps "to the maximum of its available resources", in order to achieve "progressively" the full realization of rights under the Covenant. The framers knew that Governments could not achieve rights immediately and that time was required. For that reason, he himself always directed his questions to reporting countries on the progress they had achieved and what they were doing to alleviate inevitable discrimination.

54. Mrs. BONOAN-DANDAN said that she disconcertingly found herself in sympathy with each of the conflicting points of view being advanced. For her, the basic point was that human rights were inherent: by the very fact of being born, a person was entitled to certain rights. Legislation did not confer rights but only protected them; and the Covenant was intended to achieve what was owed to all human beings as human beings. Referring to her own experience, she herself had originally equated human rights with civil and political rights, and her sudden recognition in the course of her work with rural women, of all the other human rights that were part of the fabric of daily life had come as a transforming revelation. Until people were aware of their economic, social and cultural entitlements, they would never have their rights.

55. She was sympathetic to Mr. Grissa's point as well: Governments were often helpless against the wealthy and against their own lack of means. But then again, the Covenant stood as a reminder of the goals, of what ought to be. One should get away from the situation as it was in reality, at least with the developing countries, because the real situation was detrimental. The Committee should always be moving towards what ought to be. Countries came before it in the hope of somehow getting some relief. It was interesting that a recent study on the Committee's functicning, done on the basis of its annual reports, showed precisely that, since its sixth session, the Committee had become more aggressive and had begun focusing more on violations than obligations. That preliminary finding indicated that it was perhaps high time for the elaboration of an optional protocol covering that same ground.

56. She agreed with Mr. Ceausu, Mr. Texier and Mr. Simma that a distinction must be made between what could be achieved immediately and what had to be instituted gradually. That too had implications for the Committee's approach, for it meant that it had to take indicators into account but especially that it ought to identify the minimum core of compliance, something which it had yet to do.

57. Mr. MARCHAN ROMERO said that he had found the debate very useful in enabling the Committee to face up to essential issues. Lately, the Committee had quite properly come to see itself more as a monitoring body vis-à-vis the States parties than as a passive listener to reports.

58. The Committee always had to be sure that it understood the countries' own conceptions of the rights being discussed. Even though the formulations in the Covenant were clear, not all States were fully aware of the extent to which they were in compliance with it or not. Some, for instance, believed that if the right was covered in their constitutions and or in some law, they had done all that was necessary, if the legislation created the right. States parties must not be blamed for not understanding the full implications of what they had signed; that was an area where the Committee had to provide guidance.

59. The Committee must apply flexible standards, for States were at varying stages of development. Every country was a composite of many superimposed worlds, as it were; and the Committee members had to have a better understanding of the economic, social and cultural indicators in each case before they could assess minimum compliance beyond which there was a violation.

60. It was imperative to continue discussions on the draft optional protocol. Human beings were, after all, the ones who enjoyed human rights, yet the Committee checked on the performance of States and only secondarily concerned itself with the individuals entitled to a particular right. An in-depth debate on an optional protocol, with its focus on individuals and groups of individuals, would therefore serve to put the Committee on a sounder footing in its dialogue with the States about their obligations. He also concurred with the non-governmental organization which had insisted at the previous meeting that international bodies also shared the responsibility for protecting human rights.

61. He believed the Committee should set up a separate working group to keep track of the decisions, observations and conclusions it had reached on each State party's reports. Reports were periodic, but rights were progressive. From time to time, the Committee needed to pause to recapitulate developments in each case.

62. Mrs. JIMENEZ BUTRAGUEÑO said that she thought it was very useful that not only countries but Committee members came from such different situations and positions. It made for a very fruitful discussion. Important points had been made: that political will must be distinguished from resources; and that indicators must be taken into account, because often countries with a low GDP were often doing more to fulfil their obligations than others. In framing its lists of issues, the Committee should take those considerations into account and ask specifically what progress had been made. In its concluding comments, the Committee should point out what it believed a country's future priorities should be, since such suggestions would be helpful. It was not clear, however, to what extent the Committee could influence the international financial institutions in understanding that their policies had social effects and that nothing was a matter of simple economics.

63. Mrs. AHODIKPE agreed that in considering reports the Committee must bear in mind the country's geographic and economic situation and other such factors. However, it could not vary its criteria or its human rights standards from one country to the next. It had to make objective and

discriminating judgements. Also, while she conceded Mr. Grissa's point, she noted that some of the poorest countries had the richest Governments, a reality that should be food for reflection as well.

64. Mr. WIMER ZAMBRANO, acknowledging the interest of the quite different positions taken, said that there was no question that human beings were born equal and all wanted to enjoy the same rights. However, some of the rights with which the Committee dealt had not been defined clearly enough, nor had the specific legal treatment appropriate to each right. The Committee should examine the economic, social and cultural rights one by one, and define them. Only then could it ask the States parties to meet those clear norms and definitions.

65. The CHAIRPERSON said that the discussion had served a very useful purpose, and that the members' views would no doubt continue to evolve.

The meeting rose at 6.05 p.m.